



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2022-0926]

RIN 1625-AA00

### Safety Zone; Bahia de San Juan, San Juan, PR

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters of Bahia de San Juan, within a 200-yard radius of the tug MICHELE FOSS and barge FOSS PREVAILING WIND. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the movement and berthing of two port facility cranes transiting inbound to Puerto Rico Ports Authority (PRPA) piers M, N and O, through Bahia de San Juan's main navigational channels. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector San Juan.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], until November 28, 2022. For purposes of enforcement, actual notice will be used from November 18, 2022, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0926 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Carlos M. Ortega-Perez, Sector San Juan Prevention Department, Waterways Management Division, U.S. Coast Guard; telephone (787) 729-2380, email [carlos.m.ortega-perez@uscg.mil](mailto:carlos.m.ortega-perez@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard lacks sufficient time to provide for a comment period and then consider those comments before issuing the rule since this rule is needed by November 18, 2022. It would be contrary to the public interest since immediate action is necessary to protect the safety of the public, and vessels transiting the waters of the Bahia de San Juan, PR during the planned movement and obstruction created by oversized cranes.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action

is needed to minimize the potential safety hazards associated with the restricted maneuverability and oversized cargo being carried by these vessels.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port San Juan (COTP) has determined that potential hazards associated with the movement and berthing of oversized cranes by barge on November 18, 2022, will be a safety concern for anyone within a 200-yard radius of the tug MICHELE FOSS and barge FOSS PREVAILING WIND. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the barge transits inbound from sea and while berthed alongside the wharf.

### **IV. Discussion of the Rule**

This rule establishes a temporary safety zone from November 18, 2022 through November 28, 2022. A moving and fixed temporary safety zone will be established for the the tug MICHELE FOSS and barge FOSS PREVAILING WIND while they are inside of the Bahia de San Juan and loaded with large cranes on deck. While the tug and barge are underway and laden with cranes, the temporary safety zone will cover all navigable waters of Bahia de San Juan within 200 yards of the tug MICHELE FOSS and barge FOSS PREVAILING WIND. The tug and barge are only expected to be underway for approximately one hour. There will be a fixed safety zone within 200 yards of the tug and barge, while they are moored, and discharging the cranes to Puerto Rico Ports Authority (PRPA) piers M, N and O. This safety zone may last until November 28, 2022, but it will not be enforced after the cranes have been removed from the barge. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the movement and obstruction hazard of two oversized cranes transiting inbound to PRPA piers M, N and O, through Bahia de San Juan's main navigational channels, and when they are moored to that facility. No vessel or person will

be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location and scope of the safety zone. The zone is limited in size, location, and duration as it will cover all navigable waters of the Atlantic Ocean and the Bahia de San Juan within 200 yards of the Tug (MICHELE FOSS) and Barge (FOSS PREVAILING WIND) while they are underway with cranes onboard, and while they are moored to the PRPA piers, and discharging their cargo. The zone is limited in scope as vessel traffic may be able to safely transit around this safety zone and vessels may seek permission from the COTP to enter the zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone, for the tug MICHELE FOSS and barge FOSS PREVAILING WIND, of which the moving zone is anticipated to last approximately one hour and the

fixed zone, up to ten days, that will prohibit entry within 200 yards of the tug MICHELE FOSS and barge FOSS PREVAILING WIND. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T07-0926 to read as follows:

**§ 165.T07-0926 Safety Zone; Bahia de San Juan, tug MICHELE FOSS and barge FOSS PREVAILING WIND, San Juan, PR.**

(a) *Location.* The following is a safety zone: The moving safety zone will include all navigable waters of Bahia de San Juan, within a 200-yard radius of the tug MICHELE

FOSS and barge FOSS PREVAILING WIND while transiting Puerto Rico Ports Authority (PRPA) piers M, N and O, and laden with oversized cranes. The fixed zone will include all navigable waters of Bahia de San Juan, within a 200-yard radius of the tug MICHELE FOSS and barge FOSS PREVAILING WIND while moored at PRPA piers M, N and O, and laden with oversized cranes.

(b) *Definition.* The term *designated representative* means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) No person or vessel will be permitted to enter, transit, anchor, or remain within the safety zone unless authorized by the COTP San Juan or a designated representative. If authorization is granted, persons and/or vessels receiving such authorization must comply with the instructions of the COTP San Juan or designated representative.

(2) Persons who must notify or request authorization from the COTP San Juan may do so by telephone at (787) 289-2041, or may contact a designated representative via VHF radio on channel 16.

(d) *Enforcement period.* This section will be enforced from November 18, 2022, through November 28, 2022. The moving zone will be enforced while the tug and barge are transiting with the cranes embarked, and the fixed zone will be enforced while the tug and barge are moored at the facility, and the cranes are onboard.

Dated: November 18, 2022.

**José E. Díaz,**  
*Captain, U.S. Coast Guard,*  
*Captain of the Port San Juan.*



